

Appl. No. 10/632,884
Amdt. dated November 9, 2004
Reply to Office action of September 3, 2004

REMARKS/ARGUMENTS

The Examiner rejected claims 1-26 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,623,080. Applicant submits here with a terminal disclaimer in compliance with 37 C.F.R. §1.321(c). Applicant requests withdrawal of the rejection.

The Examiner rejected claims 1-14 and 23-26 under 35 U.S.C. §103(a) as being unpatentable over Graebe ('875) in view of Smith et al. Applicant respectfully traverses the rejection on the grounds that the Examiner failed to establish a *prima facia* case of obviousness. To establish *prima facia* obviousness all the claim limitations must be taught or suggested by the prior art. *In re Royka*, 490 F.2d 981 (CCPA 1974), as cited in *The Manual of Patent Examining Procedures* §2143.03 (2001 ed.). Independent claim 1 calls for a plurality of inflatable cells within the zone aligned under the ischial area to an airflow path among the individual cells within the inflation zone comprised of patent airflow channels between the individual inflatable cells arranged in a pattern so as to restrict free airflow along the airflow path and facilitate dampening of vibration and road shock in that zone. This element is not taught or suggested by either reference alone or in combination.

Graebe '875 suggests interconnected cells for the purpose of inflation. As stated at col. 5, lines 33-36, "The cells can be independently interconnected by passages 16 or segments or groups of the cells 12 can be independently interconnected, so that the

Appl. No. 10/632,884
Amdt. dated November 9, 2004
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groups of cells are each separately inflatable independently of the remainder of the cushion." Although Greabe uses restricted passages 84 between center cells and the edge cells, these restricted passages function only to keep the edge cells rigid when the user moves around on the cushion to exert a force to urge the user back toward the center of the mattress. (col. 8, lines 12-31). Greabe does not teach or suggest airflow channels between individual inflatable cells arranged in a pattern between the individual inflatable cells so as to restrict free airflow along the airflow path and facilitate dampening of vibration and road shock in that zone. Greabe has no recognizable airflow pattern. Moreover, Greabe teaches away from the instant invention since one skilled in the art would recognize that rigid cells would aggravate vibration and road shock and not dampen it.

A thorough reading of claim 1 and the references shows that the elements of Smith pointed to by the Examiner to support the rejection are not found in claim 1. For example, independent claim 1 does not recite an external air source, pressure-sensing means, pressure regulating means or a plurality of valves. Consequently, Smith adds nothing relevant to the rejection of claim 1 and the claim is allowable over the art.

Claims 2-14 depend from independent claim 1. Applicant respectfully points out that *The Manual of Patent Examining Procedure* at § 2143.03 states, "If an independent claim is nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988)." Because

Appl. No. 10/632,884
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independent claim 1 is allowable over the art of record, Applicant submits that under the relevant law, the dependent claims also are allowable.

Independent claim 23 is allowable over Graebe and Smith for reasons similar to those pointed out regarding claim 1. Claim 23 calls for a center inflation zone with airflow dampening means within the center inflation zone for dampening vibration and road shock. Under 35 U.S.C. §112, ¶6, the Examiner must construe the recited "means" to cover the corresponding structure described in the specification and equivalents thereof. Applicant previously pointed out that neither Graebe nor Smith, alone or in combination, teach or suggest the corresponding structure included in the instant specification for dampening vibration and road shock. Hence, claim 23 is allowable. Claim 24 depends from claim 23 and is allowable under the rule of law set forth above.

Likewise, independent claim 25 is allowable over the cited art. Claim 25 calls for a center inflation zone for positioning under an ischial area of the driver of the vehicle to dampen vibration and absorb vibration and shock to the ischial area during driving, said center inflation zone comprised of a plurality of individual inflatable cells interconnected by fluid flow channels that form a continuous fluid flow path, said continuous fluid flow path having a predetermined diameter and a pattern that controls a rate of air flow between the individual cells within the center inflation zone thereby enhancing the vibration and shock absorbing effect of the cells. Similarly, independent claim 26 calls for a continuous fluid flow path having a predetermined diameter and a pattern that

Appl. No. 10/632,884
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controls a rate of air flow between the individual cells thereby enhancing vibration and shock absorbing effect of the cells. Graebe does not teach or suggest these aspects of the invention, and, as set forth above, actually teaches away from the invention. Also as stated above, Smith adds nothing to the determination of patentability of these claim, since the claims do not include any of the elements of Smith pointed to by the Examiner to support the rejection. Therefore, independent claims 25 and 26 are allowable over the cited art.

The Examiner rejected claims 8, 9 and 11-14 stating that the material of the cushion and type of support is a design choice. Applicant traverses the rejection for several reasons, most notably because these claims depend from allowable base claims. In any event, Applicant points out that choices of materials in this instance were not merely design choices, but included functional considerations. For example, with regard to claims 13 and 14, the Applicant pointed out specific functional attributes such as the fabric can be adjusted or the polymer layered to change the support characteristics. In any event, claims 8, 9 and 11-14 are allowable.

The Examiner rejected claims 15-22 under 35 U.S.C. §103(a) as being unpatentable over Graebe '875 in view of Smith as previously applied, and further in view of Graebe '410. Independent claim 15 calls for a center ischial support zone and individual peripheral support zones adjacent said ischial support zone, wherein said center ischial support zone has a continuous internal air flow path having an air flow

Appl. No. 10/632,884
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pattern that dampens airflow among cells in the center ischial support zone to and facilitate dampening of vibration and road shock in that zone. Such structure is not taught or suggested by Graebe '875 and Smith, as stated above.

Graebe '410 is not prior art under 35 U.S.C. §103(c). According to the statute, subject matter developed by another person, which qualifies as prior art under 35 U.S.C. §102(e), which appears to the Examiner's basis for citing Graebe '410, shall not preclude patentability under §103 where the subject matter of the prior art and the claimed invention were, at the time the invention was made, owned by the same persons. Applicant states that the subject matter of Graebe '410 and the claimed invention were owned by assignee, ROHO, Inc., at the time the invention was made.

Furthermore, the inventors of Graebe '410 and the claimed invention were all employees of assignee ROHO, Inc., at the time the invention was made, and had an obligation under the terms of their employment to assign their inventions to ROHO, Inc., which they did. Consequently, Graebe '410 is not relevant to the patentability of independent claim 15, which is allowable over Graebe '875 and Smith, for the reasons previously set forth. Claim 16, which further defines the invention of claim 15 as including an original air source in the truck, claim 17 which further defines the invention of claim 15 as including a regulator, and claim 18, which further defines the invention of claim 15 as including a rigid seat base are allowable as well. See, *The Manual of*

Appl. No. 10/632,884
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Patent Examining Procedure at § 2143.03 states, citing *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988).

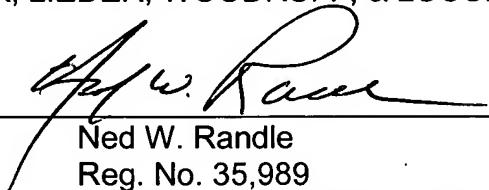
Independent claims 19 and 21 are allowable for the same reasons as independent claim 15, in that the references, either alone in combination, do not teach or suggest every element of the claim. Claim 21 was amended to change "removeably" to "removably" and not for any reason related to patentability. Claim 20 depends from independent claim 19 and claim 22 depends from independent claim 21, further defining the invention, and is allowable therewith.

Based upon the foregoing, it is clear that the claims are allowable over the prior art, as submitted. Applicant respectfully requests the Examiner to withdraw the rejections, allow the claims, and pass the case to issue.

Respectfully submitted,

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